Supreme Court, U. S.
SEP 12 1944
CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1944**

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# No. 459

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THOMAS CLYDE HELTON,

*Petitioner,*

*vs.*

THE UNITED STATES OF AMERICA.

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**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.**

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R. W. PRICE,
*Counsel for Petitioner.*

CLARENCE L. CUMMINGS,
ALFRED B. HUDDLESTON,
*Of Counsel.*

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*To the Honorable Harlan F. Stone, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

The petitioner, Thomas Clyde Helton, respectfully shows and represents, as follows:

I.

### Summary Statement of the Matter Involved.

The petitioner, at the March Term, 1943, of the United States District Court for the Nashville Division of the Middle District of Tennessee (hereinafter referred to as the

"trial court") and on July 29, 1943, was indicted (R. 1-3), in a single count, for an alleged violation of that portion of Section 11 of the Selective Training and Service Act of 1940 (50 U. S. C. A., Appendix, Section 311), hereinafter sometimes referred to as "the Act" or "said Act", reading:

> "Any person * * * who shall knowingly hinder or interfere in any way by force and violence with the administration of this Act or the rules or regulations made pursuant thereto, * * * shall, upon conviction * * * be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *"

The indictment (R. 2-3), in substance, charged that the defendant did on or about June 10, 1943, knowingly, wilfully and unlawfully hinder, obstruct and interfere by force and violence with the administration of said Act, and the rules and regulations thereunder, in that he did wilfully and unlawfully assault, beat and wound Dr. Andrew J. Jamison, a duly appointed examining physician for Local Selective Service Board No. 1, Murfreesboro, Rutherford County, Tennessee, the defendant thereby intending to hinder, delay and interfere by force and violence with the administration, performance and conduct of the official duties of said Local Board and of said Dr. Jamison, as prescribed by said Act, and the rules and regulations thereunder, and the defendant knowing that said Dr. Jamison was such examining physician.

At the September Term, 1944 of said court, the petitioner, upon arraignment having plead not guilty to the single count of the indictment (R. 4), was put to trial and, at the conclusion of the respondent's case in chief, he moved the court to instruct or direct the jury to return a verdict in his favor of not guilty upon the ground that the government had not introduced evidence, and there was no evidence in

the record, upon which a verdict of guilty could or might be predicated (R. 6 and 40); which motion was overruled by the court and to which action of the court petitioner duly excepted (R. 6 and 40). At the conclusion of all the evidence in the case, petitioner renewed his motion for a directed verdict of not guilty, which motion was also overruled by the court, and petitioner duly excepted to this action of the court (R. 55). The jury found the petitioner guilty as charged in the indictment (R. 6-7 and 55), the petitioner seasonably filed his motion for a new trial (R. 7-8 and 56-57), said motion was overruled by the court (R. 9 and 57), petitioner duly excepted to this action of the court, and thereupon the court sentenced petitioner to four years imprisonment (R. 9 and 57). Petitioner seasonably filed in duplicate his notice of appeal to the United States Circuit Court of Appeals for the Sixth Circuit (R. 10-15, 57-58) (hereinafter referred to as "appellate court") and otherwise duly perfected his appeal to said court.

Said appeal was heard (R. 69) in said appellate court and resulted in an affirmance of the judgment of the trial court on July 17, 1944 (R. 69; Opinion of Appellate Court, R. 70-74). Petitioner filed his petition for rehearing (R. 74-80), which was denied on August 14, 1944 (R. 81).

As shown by the indictment (R. 2-3), and the evidence in the case (R. 24-26, 30-32, 35, 37, 39, 45-47, 53), the prosecution and conviction of the petitioner was predicated upon the fact that, on June 10, 1943, on the north side of the Public Square in Murfreesboro, Rutherford County, Tennessee, a personal difficulty occurred between petitioner and Dr. Andrew J. Jamison in which petitioner assaulted said Dr. Jamison. Dr. Andrew J. Jamison was one of the examining physicians of the aforesaid Selective Service Board No. 1 of Rutherford County, Tennessee, on and prior to December 23, 1940 (R. 20-21, 24), and remained such examining physician at all times down to the trial of this case (R. 24).

Petitioner is advised that, as a matter of law, to warrant the submission of this case to the jury, and the affirmance of the conviction of the petitioner herein, it was, and is necessary that there be sufficient substantial evidence to establish beyond a reasonable doubt the following facts:

(1) That said assault upon Dr. Jamison was caused by or grew out of Dr. Jamison's exercise or performance of his duties as a Selective Service examining physician.

(2) That petitioner committed said assault "knowingly," as provided in the Selective Training and Service Act of 1940; that is, with the deliberate purpose, or specific or actual intent, to hinder or interfere with the administration of said Act or the rules or regulations made pursuant thereto.

(3) That said assault caused some actual hindrance or interference with the administration of said Act or the rules or regulations made pursuant thereto, either by incapacitating Dr. Jamison from exercising or performing his duties as such examining physician, or by restraining him or some member of his Selective Service Board or other official or employee charged with such administration, by fear, from exercising his or their free judgment in the discharge and performance of his or their duties under said Act or rules or regulations, or by otherwise preventing him or them from performing such duties.

Therefore, since the "questions presented" by this petition, as hereinafter set forth, all relate, necessarily on the record in this case, directly or indirectly to the issue as to whether or not there was sufficient evidence adduced on the trial to warrant the submission of the question of petitioner's guilt to the jury and support the jury's verdict that the petitioner was guilty of the offense charged in the indictment, it is necessary, in order adequately to state the

"matter involved" as required by Rule 38(2) of this Court, briefly to review the evidence in the case, particularly in reference to the aforesaid propositions of fact (1), (2) and (3), as follows:

The evidence without substantial conflict shows the following facts:

Petitioner, 35 years of age at the time of trial (R. 41), and residing at Murfreesboro, Rutherford County, Tennessee, and subject to its jurisdiction (R. 20, 41), registered under the Selective Training and Service Act of 1940 with Local Selective Service Board No. 1 of Rutherford County, Tennessee, hereinafter sometimes referred to as "said Board" and as the "Local Board", in the first registration held under said Act in October, 1940 (R. 20, 41), was placed in Class I-A on December 5, 1940 (R. 20, 41-42), was called for physical examination and was examined or partially examined on December 23, 1940 by Dr. Andrew J. Jamison, one of the examining physicians of said Board in the absence of Dr. Murfree, the chief examining physician (R. 20-21, 24, 42).

Dr. Jamison examined petitioner in the "routine way", during the course of which petitioner stated to Dr. Jamison that he was extremely nervous and had been for several years, that he had had a heart attack or fainting spell a year or two before, had suffered a sunstroke several years previously, and also a nervous breakdown, for all of which Dr. Murfree had treated him, but that he did not know what his trouble or illnesses had been nor just what treatment Dr. Murfree had prescribed for him, and petitioner suggested that Dr. Murfree would have to be consulted about said matters. (R. 24, 27, 42).

Dr. Jamison examined petitioner's heart and told petitioner he found nothing wrong with his heart and found him fit for military service, and stated to petitioner, who

appeared to Dr. Jamison to be a nervous person, that the Army would or might be good for his nerves or nervous condition (R. 24, 27, 42). Dr. Jamison did not sign the report of this physical examination of petitioner and deferred completion of the examination and said report until Dr. Murfree's return, and later at Dr. Murfree's request consented to Dr. Murfree attending to the "whole physical examination" of petitioner (R. 24, 27, 42-43). Dr. Jamison never signed a report of his said examination on December 23, 1940 of petitioner, nor any other report on any other physical examination of petitioner (R. 21, 27).

After said occasion on December 23, 1940, Dr. Jamison at no time made any further physical examination of the petitioner, and was not thereafter called upon to make any such examination, and both Dr. Jamison and petitioner, the only witnesses on the subject, in substance testified that, after said date of December 23, 1940, Dr. Jamison in his capacity as examining physician had no further connection nor contacts whatsoever at any time with the petitioner, nor petitioner with him in relation to petitioner's draft status (R. 27-28, 43-44).

After Dr. Murfree's return (R. 22) and after Dr. Jamison consented as aforesaid to Dr. Murfree's making the "whole examination" of petitioner, Dr. Murfree signed the report of the physical examination of petitioner under date of January 28, 1941 and referred petitioner to Dr. C. R. Walton, a member of the Medical Advisory Board for said Local Board, with the suggestion that petitioner was suffering from or was subject to psychoneurosis (R. 21), and Dr. Walton examined petitioner and reported, under date of January 29, 1941, that petitioner was suffering from psychoneurosis hysteria (R. 21). Upon the basis of both Dr. Murfree's and Dr. Walton's reports, said Local Board on January 31, 1941 classified and placed petitioner in Class IV-F (R. 21, 23), in which classification petitioner

remained until June 12, 1942, when he was reclassified by said Local Board and placed in Class I-A upon the basis of another physical examination of him by Dr. Murfree made on June 5, 1942 (R. 21-23). Thereafter, petitioner was called for induction and was sent to the induction center at Fort Oglethorpe, Georgia, where he was reexamined and rejected on account of psychoneurosis, as shown by the Army examining officer's report (R. 21, 23). On the basis of said last mentioned report (R. 23), said Local Board on July 27, 1942 reclassified and returned petitioner to Class IV-F, in which classification he remained at all times down to the time of the trial herein (R. 21, 23).

The petitioner did not at any time seek any deferment or exemption from military service; he did not appeal from nor seek any review of any physical examination given him or any classification in which he was at any time placed by said Local Board (R. 21-23, 44); there is no evidence whatsoever that petitioner appealed to the aforesaid Medical Advisory Board nor that he was in any way dissatisfied with the result of his examination by Dr. Jamison on December 23, 1940, or by Dr. Murfree in January, 1941 and in June, 1942, but it affirmatively appears (R. 21) that petitioner was referred to Dr. Walton, a member of said Medical Advisory Board, on recommendation of Dr. Murfree; there is no evidence that petitioner at any time asked to be examined by any other doctor or that he at any time made any complaint or expressed or manifested any dissatisfaction as to any physical examination given him either by Dr. Jamison, Dr. Murfree or Dr. Walton, or that he ever made any complaint or expressed or manifested any dissatisfaction to his Local Board or to any one else in regard to any of the classifications in which he was at any time placed; and it affirmatively appears (R. 22-23) that he responded to every notice to appear for physical examination, his notice of induction and all other notices

from said Local Board calling for a response from him (R. 21-23, 44-45).

Petitioner not only did not in any way try to avoid military service but, on the contrary, volunteered for service in June, 1942 and was rejected on his physical examination (R. 45).

No evidence was adduced, and there is no evidence in the record, showing or tending to show that petitioner at any time whatsoever made any reference whatsoever to his examination or partial examination by Dr. Jamison on December 23, 1940, which, as hereinbefore stated and as here emphasized, was the only exercise of duty performed by Dr. Jamison as examining physician for said Board with respect to petitioner.

On June 10, 1943, two years, five months and eighteen days after Dr. Jamison's examination or partial examination of petitioner on December 23, 1940, he and petitioner met at a drug store on the public square in Murfreesboro, Tennessee, and the difficulty between them ensued (R. 24-26, 45-74).

In narrating what was said between them and was done just prior to and during said difficulty, Dr. Jamison in substance testified (R. 24-26) that he went into said drug store to have a prescription filled and, as he was leaving the store, he stopped at the soda fountain or counter to get a Coca Cola and noticed petitioner sitting on or leaning against one of the counter stools at or near the other end of the soda fountain, nearest the front door of the store; that he heard petitioner say to the soda fountain or counter girls who were behind the counter, "Do you know this man," and heard one of the girls say she did not; that petitioner then said, "This is the Doc," to which he made no reply; that he heard petitioner again say, "Why this is the Doc," to which he still made no reply; that, as he finished his Coca Cola and was about to leave

the store, petitioner walked back towards him but to his rear and said, "I've got it in for you"; that he made no reply to this last remark and, as he started towards the door of the store, petitioner said, "Did you hear what I said?"; that he told petitioner he did, but that he had just considered the source and had paid no attention to him; that he walked on out of the store and got into his car and was about to close the door of his car as petitioner came up; that he said to petitioner, "Clyde, go on, I don't want to have any trouble with you. You think I have been trying to put you in the Army for two years"; that petitioner then replied "Come on out and fight, you damn old son of a bitch"; and then Dr. Jamison described the difficulty that then ensued.

Petitioner in relating what was said between them and was done just prior to and during said difficulty, after stating he went into said drug store to get a sandwich and was not expecting to see or meet up with Dr. Jamison (R. 45), in substance testified (R. 46-47) that, when he saw Dr. Jamison at the soda fountain, he said to him, "Doctor, I want to talk to you about a matter," to which Dr. Jamison did not reply; that he said to Dr. Jamison again, "Doctor, I want to talk to you about a matter," to which he still made no reply; that, about that time Dr. Jamison started to leave the store and as he passed petitioner on the way out, he said to Dr. Jamison, "Doctor, did you hear what I said?"; that Dr. Jamison said, "Yes, but I just considered the source"; that, as he walked up to Dr. Jamison sitting in his car, Dr. Jamison said, "Go on, Clyde. You are mad at me because you think I have been trying to put you in the Army"; that he said, "No, Doctor, that is not what I want to see you about. My wife tells me you have been staring at her when she is in the drug store, and I want you to know I don't like it"; that Dr. Jamison replied, "That is a god damn lie," and

reached for the dash or glove compartment on the opposite side of his car; that he thought Dr. Jamison had a pistol or other weapon in the car and was trying to get it, and he grabbed Dr. Jamison and pulled him out of the car, and then the difficulty ensued; and that he grappled with Dr. Jamison a second time, after they had once been separated, when he saw Dr. Jamison start rapidly back towards his car and he thought Dr. Jamison was going back to get whatever weapon he had in the pocket of his car.

Neither of the soda fountain girls (R. 30-31, 31-32) could recall what was said between petitioner and Dr. Jamison in the drug store.

Petitioner also in substance testified (R. 45-46), in which he was corroborated by his wife (R. 51-52), that he knew that Dr. Jamison's reputation about women was bad; that he had heard Dr. Jamison was going with the witness, Maudie Pitts; that he and his wife had discussed between themselves Dr. Jamison's bad reputation as to women; that, on the night before the difficulty, his wife had told him that, while she was in said drug store the day before the difficulty, Dr. Jamison had come in the store, and stood and stared at her the entire time she was in the store; that this naturally made him angry at the time; and that, when he saw Dr. Jamison in the store on the day of the difficulty, he decided to talk to Dr. Jamison and let him know that he did not like his staring at his wife, but that he did not have in mind having a fight or difficulty with Dr. Jamison but simply to talk to Dr. Jamison and let him know he did not appreciate his conduct towards his wife.

Dr. Jamison testified (R. 26) that, in said encounter, he sustained a cut on the back of his head, which bled some; that his right knee was skinned and bruised, and the under side of his left arm, just above the elbow, was bruised; that one side of his face was bruised and both of his eyes were discolored to some extent for several days;

and that he drove his car home after the encounter, remained at home the next day, when several of his doctor friends called on him, and was back at his office and up town the next day.

Dr. Jamison did not testify or claim in his testimony, and no evidence was offered or adduced on the trial, proving or tending to prove, that Dr. Jamison was physically incapacitated from performing any of his duties as examining physician by reason of injuries sustained by him in said encounter, or that he was thereby intimidated or restrained by fear or otherwise in any degree from performing his said duties, or that he received or needed any medical attention or treatment whatsoever. Neither Dr. Jamison nor Mrs. McGhee, the chief clerk of said Local Board who testified in the case (R. 20-23), testified, and no evidence was offered or adduced on the trial, proving or tending to prove, that registrants were examined or called for physical examination between the time of the encounter with petitioner on June 10, 1943 and Dr. Jamison's return to his office on June 12, 1943, nor that Dr. Jamison's services as examining physician for said Board were needed or required between said dates or at any other time when he was unable to perform same on account of any injury received by him. No claim was made, and no evidence was offered or adduced on the trial, proving or tending to prove that any member of said Local Board, any examining physician or employee thereof, or any other person officially charged with the administration of the Act or the rules or regulations thereunder were restrained or intimidated by fear or otherwise, influenced, affected, or in anywise hindered or interfered with, in the performance of their duties in the administration of said Act or rules or regulations.

The appellate court, in affirming the judgment of the trial court (Opinion. R. 70-74), in substance held (1) that there was substantial evidence from which the jury was war-

ranted in finding that the aforesaid assault upon Dr. Jamison by petitioner on June 10, 1943, was caused by Dr. Jamison's exercise of his duties as a Selective Service physician (that is, by his aforesaid examination or partial examination of petitioner on December 23, 1940) and (2) that the assault by petitioner upon Dr. Jamison, growing out of his said exercise of duty, was—in and of itself, and without regard to whether or not petitioner intended at the time of said assault to hinder or interfere with the administration of said Act or rules or regulations, and in the absence of evidence proving or tending to prove that an actual hindrance or interference with such administration resulted from said assault—an interference by force and violence with the administration of the Act or the rules or regulations thereunder, the conclusions of the appellate court being stated in its Opinion (R. 73-74), as follows:

> "The jury did not believe appellant's story. They had the right to draw the conclusion that appellant was nursing a grudge against the doctor for what he had told him, on his first physical examination, to the effect that the Army would be a good thing for him, and that he was physically fit for military service. There was substantial evidence that he had made accusations that he was going to "get" the doctor; that he had remarked to another witness that the doctor was trying to force him into the Army; that just before the fight, he had threatened the doctor that he had it in for him; and, from the statements to the two police officers and the federal agent afterward, that he had committed the assault because of some peculiar feeling of vengeance arising out of the fact that the doctor had approved him for military service, and, as a Selective Service official, whose duties were to certify draftees as fit for military service, was still trying to subject him to service. Appellant's explanation about his anger over the doctor's looking at his wife, appears to have been considered by the jury as a fiction designed for the purpose of de-

fense and resulting in an attempt to discredit and besmirch Dr. Jamison and, incidentally, a young girl who was innocent of wrongdoing. As far as the evidence discloses, appellant had never mentioned this story to anyone until the trial, although he had told several parties, after the assault, that he wished he had killed the doctor because of the latter's efforts to place him in the Army. There was substantial evidence from which the jury could find that the assault was caused by Dr. Jamison's exercise of his duties as a Selective Service physician."

"An assault upon a member of such a Board, or one of its examining physicians, growing out of his exercise of duty, is an interference by force and violence with the administration of the Act. The orderly functioning of the Board could not continue if its members or physicians were restrained from exercising their free judgment by fear, and if they felt they would not be safe, in the exercise of their duties, from the attacks of those who became vengeful as a result of their official decisions. Moore v. United States, 128 F. (2d) 974 (C. C. A. 5); Burwell v. United States, 137 F. (2d) 155 (C. C. A. 4)."

The following evidence is the only evidence in the record upon which said conclusions of the appellate court, stated in the foregoing quotation, can be, and it is apparent therefrom that said conclusions were thereon, predicated, to-wit:

(A) Dr. Jamison's testimony on direct examination (R. 24) that after he examined or partially examined him, petitioner "seemed to be cold or less friendly or cordial towards me," when they met or passed on the street or in the barbershop or elsewhere about town and, again on cross-examination (R. 28), that he "thought" petitioner seemed "cooler" towards him. Dr. Jamison testified (R. 24) that he paid no particular attention to this apparent attitude of petitioner; that (R. 28) he saw petitioner on the streets and about town numerous times, between December 23, 1940 and June 10, 1943, and petitioner never threatened nor hit him nor said

anything to him to show that petitioner was mad or disgruntled with him. Dr. Jamison did not testify as to any statement by or conduct of petitioner during his examination of petitioner that evinced, and no evidence was offered or adduced proving or tending to prove, that petitioner during said examination manifested anger, disgruntlement or dissatisfaction in any way at or on account of anything that was said or that occurred during said examination, and petitioner in substance testified (R. 42) that, instead of making him angry or disgruntled, Dr. Jamison's statement (R. 24) to him to the effect that he found him fit for military service and that the Army would or might be good for him pleased and relieved him.

(B) The testimony (R. 35) of the witness, Maudie Pitts, that petitioner "one time before the difficulty" said to her: "I am going to get Dr. Jamison." Petitioner emphatically denied (R. 50) that he made said statement or that he at any time made threats of any kind against Dr. Jamison, and the interest of the witness Maudie Pitts is apparent from the evidence in the record as to the relationship shown to have existed between her and Dr. Jamison (R. 28-29, 36, 46, 49-50, 51).

(C) The statement (R. 38) of Dr. B. W. Rawlins, stipulated into the record, the material part of which is as follows:

> "In a casual conversation with a group of men in the Stones River Club, a social club in Murfreesboro, we were discussing various phases of the draft of men for the armed services. I heard Clyde Helton say that he was willing to go to the Army, did not feel that he was any better than anybody else, if they wanted him he would go, but that he did not feel that he should be 'railroaded' into the Army as Dr. Jamison was 'railroading' him.

"I cannot give dates. It may have been three weeks, three months, or six months before the fight between the two men, Clyde Helton and Dr. Jamison, involved in this case."

Petitioner's account (R. 48) as to what was said on said occasion was as follows:

"Dr. Rawlins is mistaken as to what he said I said over at the Stones River Club. The occasion Dr. Rawlins referred to occurred back in the winter of 1943, several months before June 10, 1943. I dropped by the Stones River Club where I am a member, about 10 o'clock one night, and went into the card room just about the time the card game broke up. Some of the players left, and some of them sat around a while. Dr. Rawlins was present. The talk got around to a discussion of the war and the draft. Somebody in the crowd asked Dr. Rawlins about a boy named Rush Taylor about whom there had been considerable talk about whether or not he was actually disabled for Army service, and Dr. Rawlins stated, as I remember, that he had examined and waited on Rush Taylor, and he knew Rush Taylor had an injury to his back and that, if he was taken to the Army, the Army would find out sooner or later that his back was injured. Dr. Rawlins also said that Dr. Jamison did not seem to think there was anything wrong with Rush Taylor and seemed to be trying to get him in the Army. I spoke up and said that I was in IV-F and did not suppose I would ever have to go to the Army, that I was not any better than anybody else and wanted to go if I was able to go if they wanted me, but that I would hate to be pushed into the Army by Dr. Jamison or anybody else if I was not able to go. I don't think I used the words 'railroaded.' I did not say Dr. Jamison was trying to railroad me into the Army or that Dr. Jamison 'was railroading' me into the Army."

Dr. Rawlins was not recalled or re-examined and no effort nor attempt to contradict petitioner was made, after petitioner gave his version of what was said on said occasion.

(D) Dr. Jamison's testimony (R. 25), already noted supra, to the effect that petitioner said to him in the drug store just before their difficulty or encounter: "I've got it in for you." As noted, supra, petitioner in effect denied (R. 46) making this statement.

(E) The testimony (R. 37-38, 52-53) of the police officers, Claud Vance and F. C. Lamb to the effect that, shortly after the difficulty or encounter between petitioner and Dr. Jamison, petitioner said, in response to a remark addressed to him by Claud Vance to the effect that he might have killed Dr. Jamison, in substance that he hoped he did kill Dr. Jamison and that Dr. Jamison had been trying to put him in the Army for the last two years. The witness also testified (R. 37-38, 53) that petitioner was highly excited and nervous at the time and also said that Dr. Jamison "had been meddling in his business." Petitioner in substance testified (R. 47-48) that, on this occasion, he was still very excited and nervous, and that he did not remember what was said between him and said officers nor that he said anything to them to the effect that Dr. Jamison had been trying to put him in the Army, but that, if he did say anything to that effect, he "must have been referring to what Dr. Jamison had said to me when I first walked up to his car, to the effect that I was mad at him because I thought he had been trying to put me in the Army, because I had no reason to think, and did not think, Dr. Jamison had been trying to put me in the Army" (R. 48).

(F) The testimony (R. 39) of W. E. Hopton, an agent of the Federal Bureau of Investigation, in relating an interview had with petitioner on the occasion petitioner was arraigned before the United States Commissioner, as follows:

> "I asked him why he had hit Dr. Andrew J. Jamison, and he said that Dr. Jamison had been trying to put

him into the Army. I asked him if Dr. Jamison had ever said anything to him about putting him in the Army, and he said that Dr. Jamison had not, but that several people had told him Dr. Jamison was trying to get him into the Army. I asked him who had told him that, and he said both Dr. B. W. Rawlins and Dr. Samuel L. Wiles, both of Murfreesboro, had told him that."

Petitioner testified (R. 39) in substance that he did not remember telling this witness that Dr. Jamison had been trying to put him into the Army but, if he did, he was referring to what Dr. Jamison had himself said to him, when he went up to Dr. Jamison's car on June 10, 1943, just before the start of their difficulty or encounter, to the effect that he was mad at Dr. Jamison because he thought Dr. Jamison had been trying to put him in the Army.

No evidence was offered or adduced on the trial proving or tending to prove that petitioner had ever previously been in any kind of trouble, no assault was made upon his reputation, and his good reputation for truth and veracity was testified to (R. 33-34) by five character witnesses offered in his behalf, the court expressly limiting the number of such witnesses to five.

## II.

### Jurisdiction.

The judgment of the appellate court, affirming petitioner's conviction, was entered July 17, 1944 (R. 69). Petitioner's petition for a rehearing in said court was filed August 3, 1944 (R. 74), within the time provided and required by the rules of said court, and was denied August 14, 1944 (R. 81). The jurisdiction of this court is invoked under section 240 of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A., Section 347(a)).

## III.

### The Questions Presented.

All the questions hereby presented relate directly or indirectly to the single issue as to whether or not there was sufficient substantial evidence adduced on the trial to warrant the submission to the jury of the question of defendant's guilt of the offense charged in the indictment, and to support the jury's verdict that the petitioner was guilty of said offense and the appellate court's decision affirming petitioner's conviction. Said questions are as follows:

1. As applied to this case, was it necessary or essential, as the appellate court apparently held it was (R. 73), to warrant or sustain a conviction of the petitioner of said offense, that the assault made by petitioner upon Dr. Jamison on June 10, 1943, be proved by substantial evidence to have been caused by, or to have grown out of, Dr. Jamison's exercise or performance of his duties as examining physician (that is, on the facts of this case, out of his examination or partial examination of petitioner on December 23, 1940) and, if so, was sufficient substantial evidence adduced on the trial to prove, and from which the jury could find, as held by the appellate court (R. 73), that said assault was caused by or grew out of such exercise and performance by Dr. Jamison of his duties as examining physician?

2. As applied to this case, was it necessary or essential, to warrant or sustain petitioner's conviction of said offense, that said assault upon Dr. Jamison be proved to have been committed by petitioner "knowingly", as provided in that portion of the Act under which he was indicted, that is, with the deliberate purpose or specific or actual intent to hinder or interfere with the administration of said Act or the rules or regulations thereunder, and was sufficient substantial

evidence adduced on the trial to prove, or to warrant the jury in finding, that said assault was so committed?

3. As applied to this case, was it necessary or essential, to warrant or sustain petitioner's conviction of said offense, that said assault be proved by substantial evidence to have caused some actual hindrance or interference with the administration of said Act or rules or regulations, either by incapacitating Dr. Jamison from exercising or performing his duties as such examining physician, or by restraining him or some member of his Selective Service Board or other official or employee, charged with such administration, by fear, from exercising his or their free judgment in the discharge and performance of his or their duties under said Act or rules or regulations, or by otherwise preventing him or them from performing such duties, and was sufficient substantial evidence adduced on the trial to prove, or to warrant the jury in finding, that said assault caused such actual hindrance or interference?

4. As held by the appellate court (R. 74), is an assault upon an examining physician of a local Selective Service Board, growing out of his exercise of duty, in and of itself and without regard to the intent with which it was committed and without regard to whether or not any such actual hindrance or interference is proved by substantial evidence to have been caused by such assault, an interference by force and violence with the administration of said Act, within the meaning and purport of that portion, quoted supra, of said Act under which petitioner was indicted and convicted?

5. Was sufficient substantial evidence adduced on the trial to warrant and to sustain the petitioner's conviction?

## IV.

### Reasons Relied on for the Allowance of the Writ.

(1) The appellate court in effect held in this case (R. 73-74) (a) that there was substantial evidence from which the jury was warranted in finding that petitioner's assault upon Dr. Jamison was caused by Dr. Jamison's exercise of his duties as a Selective Service physician and (b) that an assault upon an examining physician or, for that matter, upon a member of a local Selective Service Board, growing out of his exercise of duty—in and of itself and without regard to the intent with which it is committed and without regard to whether or not any actual hindrance or interference with the administration thereof is proved by substantial evidence to have been caused by such assault—is an interference by force and violence with the administration of the Selective Training and Service Act of 1940 or the rules or regulations thereunder, within the meaning and purview of that portion, quoted supra at the beginning of this petition, of Section 11 of said Act (50 U. S. C. A., Appendix, Section 311) for the violation of which petitioner was indicted and convicted.

The appellate court in its opinion did not define, nor consider the significance of the word "knowingly" appearing in said portion of said Section 11, and apparently considered that said word did not require, in order to prove the commission of or to sustain a conviction for an offense thereunder, that said assault be proved, by substantial evidence, to have been committed with the deliberate purpose or specific or actual intent to hinder or interfere with the administration of said Act or the rules or regulations thereunder.

As noted above, the appellate court, impliedly at least, also in effect held that it was not necessary, in order to war-

rant or sustain a conviction for said offense, that there be substantial evidence proving such actual hindrance or interference.

(2) This court has not as yet, so far as petitioner is advised, construed said portion of Section 11 of said Act, nor reviewed a conviction thereunder.

(3) Millions of servicemen have been, and many others in the future will probably be, selected and inducted, under said Act, into the armed services of the United States by the thousands of Local Service Boards throughout the United States; the general public need of an authoritative and elucidating decision by this court construing the aforesaid portion of Section 11 of said Act is apparent; and such decision is of great importance to, and is needed for the guidance and instruction of, such Local Boards and others charged with the administration of said Act, servicemen, registrants and others who in the future will become subject to said Act, the legal profession, trial courts and the Circuit Courts of Appeal.

(4) The appellate court thus has decided, and this case involves, important questions of federal law which have not been, but should be, settled by this Court.

## V.

### Prayer for Writ.

Wherefore, your petitioner presents to this court, and files herewith as an exhibit hereto, a duly certified transcript of the entire record in this case, as the same appears in the United States Circuit Court of Appeals for the Sixth Circuit, and prays that a writ of certiorari issue to said Court to review the judgment affirming defendant's con-

viction in the trial court, entered in said court in this case on July 17, 1944, that said judgment of said Court be reversed, and for such other and further relief in the premises as to this Court may seem just and proper.

THOMAS CLYDE HELTON,
By R. W. PRICE,
*Murfreesboro, Tennessee,*
*Counsel for Petitioner.*

CLARENCE L. CUMMINGS,
ALFRED B. HUDDLESTON,
*Murfreesboro, Tennessee,*
*Of Counsel.*

SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1944**

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# No. 459

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THOMAS CLYDE HELTON,

*Petitioner,*

*vs.*

THE UNITED STATES OF AMERICA.

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## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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MAY IT PLEASE THE COURT:

I.

### Opinion of the Court Below.

The opinion in this case of the Circuit Court of Appeals (R. 70-74), filed in said court on July 17, 1944, so far as petitioner and his counsel are advised, has not as yet been officially reported.

II.

### Jurisdiction.

A concise statement of the grounds on which the jurisdiction of this Court is invoked is made in the accompanying

petition for writ of certiorari under the corresponding heading therein "Jurisdiction," and is hereby adopted and made a part hereof.

It may be added that the following cases, in which convictions under other clauses of Section 11 of the Selective Training and Service Act of 1940 (50 U. S. C. A., Appendix, Section 311) were reviewed, sustain said jurisdiction:

*Bartchy* v. *United States*, 319 U. S. 484, 87 L. ed. 1534, 63 S. Ct. 1206;

*Hartzel* v. *United States*, decided June 12, 1944, — U. S. —, 88 L. ed. 1163 (Advance Opinions).

## III.

### Statement of the Case.

The essential facts of the case are fully stated in the accompanying petition for writ of certiorari under the corresponding heading therein "Summary Statement of the Matter Involved," and in the interest of brevity said statement in said petition is not here repeated but by reference is hereby adopted and made a part hereof. Any necessary elaboration of the evidence on the points or questions herein involved will be made in the course of the argument herein.

## IV.

### Specification of Errors.

1. The Circuit Court of Appeals erred in finding and holding (R. 73) that there was substantial evidence from which the jury could find that the assault by petitioner upon Dr. Andrew J. Jamison was caused by Dr. Jamison's exercise of duties as a Selective Service examining physician.

2. The Circuit Court of Appeals erred in finding and holding (R. 74) that an assault upon an examining physi-

cian, or a member of a local Selective Service Board, growing out of his exercise of duty, is an interference by force and violence with the administration of the Selective Training and Service Act of 1940 or rules or regulations thereunder, within the meaning and purview of that portion of Section 11 of said Act (50 U. S. C. A., Appendix, Section 311) for the violation of which petitioner was indicted and convicted in this case.

3. The Circuit Court of Appeals erred in not finding and holding that it was necessary and essential, to warrant or sustain petitioner's conviction for the offense defined in said portion of said Act and charged in the indictment, that the assault upon said Dr. Jamison be proved, by substantial evidence, to have been committed by petitioner "knowingly," as provided in said portion of said Act, that is, with the deliberate purpose or the specific or actual intent to hinder or interfere with the administration of said Act or the rules or regulations thereunder, and in not finding and holding that there was no, or not sufficient, substantial evidence proving that said assault was made "knowingly," that is, with such intent.

4. The Circuit Court of Appeals erred in not finding and holding that, to warrant or sustain petitioner's conviction of said offense, it was necessary and essential that said assault be proved, by substantial evidence, to have caused some actual hindrance or interference with the administration of said Act or rules or regulations, either by incapacitating Dr. Jamison from exercising or performing his duties as such examining physician, or by restraining him or some member of his Selective Service Board or other official or employee, charged with such administration, by fear, from exercising his or their free judgment in the discharge and performance of his or their duties under said Act or rules or regulations, or by otherwise preventing him or them from

performing such duties, and in not finding and holding tha such actual hindrance or interference was not so proved.

5. The Circuit Court of Appeals erred in finding an holding, in effect, that sufficient substantial evidence wa adduced on the trial to warrant and to sustain petitioner' conviction of said offense.

## V.

### Summary of the Argument.

Point A. To warrant or sustain the conviction of the peti tioner, there must be substantial evidence to prove the fol lowing facts, all of which are essential elements or ingredi ents of the offense charged, to-wit:

1. That the assault by petitioner upon Dr. Jamison wa caused by or grew out of Dr. Jamison's exercise or perform ance of his duties as examining physician.

2. That said assault was committed "knowingly," tha is, with the deliberate purpose or specific or actual intent t hinder or interfere with the administration of the Selectiv Training and Service Act of 1940 or the rules or regulation thereunder.

3. That said assault caused an actual hindrance or inter ference with the administration of said Act or rules or regu lations, either by incapacitating Dr. Jamison from exer cising or performing his duties as examining physicia or by restraining him or some member of his Selectiv Service Board or other official or employee, charged wit such administration, by fear, from exercising his or thei free judgment in the discharge and performance of his o their duties under said Act or rules or regulations, or b otherwise preventing him or them from performing suc duties.

Point B. There is no, or insufficient, substantial evidence to prove the propositions of fact, the essential elements or ingredients of the offense charged, stated in Point A, supra, or otherwise to prove petitioner's guilt.

## VI.

## Argument.

### Point A.

Section 11 of the Selective Training and Service Act of 1940 (50 USCA, Appendix, Section 311), under which petitioner was indicted and convicted, in so far as applicable, reads:

> "Any person * * * who shall knowingly hinder or interfere in any way by force and violence with the administration of this Act or the rules or regulations made pursuant thereto, * * * shall, upon conviction * * * be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * * ".

It seems clear from the mere reading of said clause of said Section 11, and it is submitted, that the offense defined and created thereby involves the following necessary elements or ingredients, to-wit:

*First.* The commission of some act or acts by force and violence, cause by or growing out of the administration of said Act or the rules or regulations thereunder; that is, said act or acts must be in some way connected with, relate to, or grow out of the exercise and performance of some duty required in, such administration.

The Circuit Court of Appeals, in finding (R. 73) that petitioner's assault was caused by Dr. Jamison's exercise of his duties as examining physician and in holding (R. 74)

that such assault, so caused, was an interference by force and violence with such administration, also by necessary implication held that it is a necessary element or ingredient of said offense that said act or acts of violence be caused by, relate to, or grow out of such administration. In the cases of *Moore* v. *United States*, 128 F. (2d) 974 (C. C. A. 5) and *Burwell* v. *United States*, 137 F. (2d) 155 (C. C. A. 4), involving prosecutions for violations of the same clause, as here, of Section 11 of said Act, the assaults clearly related to or grew out of such administration, and said cases are relied upon as supporting the insistence here made.

*Second.* That said act or acts be committed "knowingly", that is, with the deliberate purpose, or specific or actual intent, to hinder or interfere with the administration of said Act or the rules or regulations thereunder.

Congress must have intended that the word "knowingly" in the clause of Section 11 of said Act, quoted supra, have some significance, other than the ordinary criminal intent or scienter, that is, in the sense that a person must intend the consequences of his acts, because such ordinary criminal intent and scienter would be an element of the offense, without the inclusion of the word "knowingly" in said clause. Thus, unless it is given some significance other than such ordinary criminal intent or scienter, said word is in effect read out of the statute, and is mere surplusage.

It is submitted, despite the reliance on the first of them by the Circuit Court of Appeals, in its Opinion (R. 74), that the insistence that a deliberate purpose or specific or actual intent to hinder or interfere with such administration is supported and sustained by the following reported cases: *Moore* v. *United States*, supra; *United States* v. *Trypuc*, 136 F (2d) 900 (C. C. A. 2); *United States* v. *Hoffman*, 137 F. (2d) 416.

In *Moore* v. *United States*, supra, the Court in part said:

> "* * * *The jury also was justified in concluding from the evidence that Moore committed the assault well knowing that his acts would so hinder and interfere with the board's performance of its duties.* The day before the assault was committed, Moore had announced that he would prevent a member of the board from putting him in the Army, and that he would straighten out the board with regard to his classification. *His later acts made clear that it was his intention to produce this result by the illegal method of force and violence rather than the legal procedure of producing additional evidence.*" (Italics added.)

In *United States* v. *Trypuc*, supra, involving a conviction of a registrant under another clause of Section 11 of said Act, for "knowingly" failing to keep his draft board advised of an address where mail would reach him, the court in part said at 136 F. (2d) 901:

> "We cannot accept the contention that the evidence was insufficient to support the verdict. But an examination of the charge convinces us that the issue whether the appellant 'knowingly' failed to keep the board advised of an address where mail would reach him was not properly submitted to the jury. The judge charged that whether the address given in the questionnaire was correct is unimportant 'because I will narrow it down to the charge that he failed to keep the Draft Board notified as to his change of address, which he admittedly made and which he did not inform the Draft Board of.' The judge went on to say that every person must be deemed to have notice of the requirements of the Act. 'You can't say "I did not know of it" because you are deemed to know of it.' Doubtless the judge had in mind Articles 641.1 and 641.2 of the Regulations. *But we do not think the Regulations can be interpreted so broadly as to read 'knowingly' out of the statute.* Not every failure to perform a duty im-

> posed by the statute is made criminal; only a person 'who shall knowingly fail or neglect' his duty is to be punished. * * *'' (Italics added).

In *United States* v. *Hoffman*, supra, involving the conviction of a registrant under said Section 11, the court in part said at 137 F (2d) 419:

> "Since it was conceded that defendant's delay in arrival would not alone have been regarded as harmful—and this accords with the regulations, 32 C. F. R., 1941 Supp. 633.12 (b)—*the real question is as to his intent when he arrived;* and this is the issue which the Court submitted to the jury. *This seems proper, the statute requires something more than mere failure, for the accused must 'knowingly fail or neglect to perform' a statutory duty.* 50 U. S. C. A. Appendix, Sec. 311; United States v. Trypuc, 2 Cir., June 11, 1943, 136 F. (2d) 900. * * *'' (Italics added).

*Third.* That said act or acts cause or result, as a matter of fact, in some actual hindrance or interference with the administration of said Act or the rules or regulations thereunder.

The clause of said Section 11 of said Act, quoted supra, does not by its terms, make it an offense to attempt by force and violence to hinder or interfere with the administration of said Act or the rules or regulations thereunder, as for example by an assault with such intent; and, since the Act does not in terms make such attempts an offense, it is submitted that Congress intended to make unlawful, and to punish, only acts of force and violence that cause, or result in, some hindrance or interference with such administration as a matter of fact. Congress could well have intended, as it is insisted was done, only to prohibit and punish acts of force and violence that, as a matter of fact, cause or result in an actual hindrance or interference with such administration, and to leave to the police and criminal

courts of the states the prosecution and punishment of other such acts not causing or resulting in such hindrance or interference.

Despite the Circuit Court of Appeals reliance thereon in its opinion (R. 74), it is submitted that neither the case of *Burwell* v. *United States*, supra, nor *Moore* v. *United States*, supra, hold contrary to this contention. In *Burwell* v. *United States*, supra, the examining physician assaulted in that case in effect testified that said assault caused him to feel that it was unsafe for him to continue as examiner for his draft board and thus actual hindrance or interference was shown by evidence in the case to have been caused by said assault. In *Moore* v. *United States*, supra, particularly in view of the fact that the draft board had just the day before rejected the defendant's claim of deferment on account of dependency of his parents and classified him 1-A, the fact that by statements and threats he evinced a determination to influence the action of his draft board, and the fact that at the time of the assault he was discussing said board's action with its chairman and complaining thereof, it is submitted that all the court held, on the facts of that case, was that the evidence warranted the jury in finding such actual hindrance or interference. Further, it does not appear from the reported opinion in either of said cases that the question, whether an actual hindrance or interference resulted from the assault, was made or relied on.

It appears from the indictment (R. 2), and from the undisputed evidence in the case (R. 24-26, 30-32, 35, 37-38, 45-48, 52-53) that the only act of force and violence on the part of petitioner, charged and proven as the basis for petitioner's conviction, was petitioner's assault upon Dr. Jamison on June 10, 1943. It also appears from such evidence (R. 20-21, 22, 24, 27-28, 42, 43-44) that the only exercise of duty by Dr. Jamison as examining physician,

with respect to petitioner, was his physical examination or partial examination of petitioner on December 23, 1940. Therefore, it is submitted that it is necessary and essential, in order to have warranted and to sustain petitioner's conviction in this case, that there be substantial evidence in the record to prove that said assault was caused by or grew out of Dr. Jamison's said examination or partial examination of petitioner; that petitioner committed said assault "knowingly", that is, with the deliberate purpose or the specific or actual intent to hinder and interfere with the administration of the Selective Training and Service Act of 1940 or the rules or regulations thereunder; and that said assault caused or resulted, as a matter of fact, in an actual hindrance or interference with such administration.

POINT B.

The evidence in the case has been extensively reviewed in the accompanying petition for writ of certiorari under the heading therein "Summary Statement of the Matter Involved", and in the interest of brevity it is not proposed again to summarize all the evidence in detail, but said review is hereby adopted and referred to. However, in order to determine whether or not there is sufficient substantial evidence in the record to prove the aforesaid essential propositions of fact, the essential elements or ingredients of the offense charged, it is deemed necessary to review and discuss in more or less detail the material evidence in the case relating thereto.

There is no dispute whatsoever in the evidence or on the record herein as to the following facts or matters:

1. As shown under Point A, supra, the only act of force and violence on the part of petitioner, charged and proven as the basis for petitioner's conviction, was petitioner's assault on Dr. Jamison on June 10, 1943, and the only ex-

ercise of duty by Dr. Jamison as examining physician, which could have caused, out of which said assault could have grown, or to which it could be claimed that said assault related, was Dr. Jamison's examination or partial examination of petitioner on December 23, 1940.

Dr. Jamison did not complete said examination nor sign a report of said examination, and Dr. Murfree continued and completed said examination, according to Dr. Jamison's testimony (R. 27), the testimony (R. 21, 22) of the clerk of his local Board, and petitioner (R. 42-43) which is all the evidence in the record on the subject.

After said examination or partial examination, Dr. Jamison did not, and there is no evidence that he was again at any time called upon to, examine petitioner; he never signed nor made any report of any physical examination of petitioner; and thereafter had no further connections or contacts whatsoever at any time with petitioner in his capacity as examining physician. Dr. Jamison (R. 27), the clerk of the local Board in effect (R. 20-23), and petitioner (R. 43-44), the only witnesses on the subject, all testified that Dr. Jamison examined petitioner only once, on December 23, 1940. Both Dr. Jamison (R. 27) and said clerk (R. 21), the only witnesses on the subject, testified that Dr. Jamison signed none of the reports of physical examinations of petitioner. Both Dr. Jamison (R. 27-28) and petitioner (R. 43-44), the only witnesses on the subject, testified that, after said examination, or partial examination, Dr. Jamison had no further connection whatsoever at any time with petitioner as examining physician, and petitioner had no further contacts whatsoever with Dr. Jamison relating to his draft status.

Thus, it is uncontradicted that the only exercise of duty or connection whatsoever that Dr. Jamison in his capacity as examining physician at any time performed or had in relation to petitioner was his said examination or partial

examination, and the conclusion is inescapable that, if Dr. Jamison was trying to put or "railroad" petitioner into the Army (as to which reference is here made to the discussion, infra, of the evidence to that effect), or if he was doing or saying anything to cause petitioner to be inducted into the armed services, whatever he was saying or doing, if anything, must have been said or done in his *private* or *unofficial* capacity as distinguished from his official capacity as examining physician.

2. Petitioner was classified and placed in Class IV-F by his local Board on January 31, 1941, upon the basis of Dr. Walton's report of January 29, 1941, that he had or was suffering from psychoneurosis hysteria, and of Dr. Murfree's report of January 28, 1941, that he had or was suffering from psychoneurosis (R. 21, 23, 43). Petitioner remained in Class IV-F from January 31, 1941, to June 12, 1942, when he was classified I-A, was called for induction and sent to the induction center at Fort Oglethorpe, Georgia, where he was examined and rejected on July 21, 1942, on account of psychoneurosis, and thereupon, on July 27, 1942, on the basis of the Army examining officer's rejection of him on account of psychoneurosis, he was reclassified and returned to Class IV-F, where he has at all times since remained. Petitioner had not, down to the time of the trial in this case, thereafter been called for further physical examination, nor had any further change been made in his classification or draft status (R. 21, 23, 44).

Thus, the conclusion is compelled that petitioner, certainly for nearly a year prior to his difficulty or encounter with Dr. Jamison on June 10, 1943, had every reason to believe that he was unfit for military service and would permanently remain in Class IV-F, and consequently he had no reason or motive to seek or in any way to bring about any change in his classification or draft status.

3. Petitioner did not at any time seek deferment or exemption from military service; he did not appeal from nor seek any review of any physical examination given him or any classification in which he was at any time placed by his Local Board (R. 21-22, 44); there is no evidence whatsoever that petitioner appealed to the Medical Advisory Board of said Local Board, nor that he was in any way dissatisfied with the result of his examination by Dr. Jamison on December 23, 1940, by Dr. Murfree in January, 1941, and in June, 1942, but it affirmatively appears (R. 21, 43) that petitioner was referred to Dr. Walton, a member of said Medical Advisory Board, on recommendation of Dr. Murfree; there is no evidence that petitioner at any time asked or requested to be examined by any doctor or examining physician or that he at any time made any complaint or expressed or manifested any dissatisfaction as to the physical examination given him by either Dr. Jamison, Dr. Murfree or Dr. Walton, in regard to any classification in which he was at any time placed; and it affirmatively appears (R. 22-23) that he responded to every notice to appear for physical examination, his notice of induction and all other notices from his Local Board calling for a response from him (R. 22-23, 42, 44); and petitioner volunteered for service in June, 1942, but was rejected on his physical examination (R. 45).

No evidence was adduced, and there is no evidence in the record, showing or tending to show that petitioner at any time or place or to any person whatsoever made any reference whatsoever to his examination or partial examination by Dr. Jamison on December 23, 1940, or to any of his other physical examinations, or with reference to any of his classifications or any other action taken by his Local Board with reference to his draft status.

Thus, there was nothing that occurred in connection with petitioner's physical examinations, classifications or any

other action taken with reference to his draft status or case to justify the inference or conclusion that he was disgruntled, angered or dissatisfied therewith, or that petitioner desired or at any time did anything whatsoever to avoid military service.

It is therefore submitted that the matters stated, in 1, 2 and 3 immediately above, are wholly inconsistent with the conclusions of the Circuit Court of Appeals (R. 73) to the effect that the jury was justified in finding that petitioner at the time of his assault upon Dr. Jamison nursed a grudge against him on account of what Dr. Jamison had said to him, at the time of his examination of petitioner on December 23, 1940, to the effect that he found him physically fit for military service and that the Army might do his nerves good (R. 24, 42), and to the effect that there was substantial evidence from which the jury could find that said assault was caused by Dr. Jamison's exercise of his duties as a Selective Service physician, and wholly inconsistent with any other theory that said assault was caused by, grew out of, or had any connection whatsoever with said physical examination.

The testimony of Dr. Jamison, and the statements attributed to petitioner, hereinafter discussed in detail, it is earnestly submitted, do not supply the necessary and requisite, substantial evidence to connect said assault with said examination, or to prove that said assault was caused by or grew out of said examination, and to prove that said assault was made "knowingly", that is, with the deliberate purpose or specific or actual intent to hinder or interfere with the administration of the Selective Training and Service Act of 1940 or the rules or regulations thereunder. An examination and discussion of said testimony and statements follow:

1. Dr. Jamison testified on direct examination (R. 24) that, after his examination of petitioner on December 23,

1940, petitioner "seemed to be cold or less friendly or cordial toward me", and on cross-examination (R. 28) that he "thought" petitioner "seemed" cooler.

In connection with this testimony, it is pointed out that Dr. Jamison gave no basis for his conclusions; that evidently Dr. Jamison himself was not impressed with any change in petitioner's attitude (R. 24); that Dr. Jamison admitted (R. 28) that they had never been friendly, had had but one conversation prior to said examination, and just knew who petitioner was and spoke to him in passing; that Dr. Jamison admitted (R. 28) that he saw and passed petitioner numerous times between said examination and the difficulty between them on June 10, 1943, and petitioner never threatened, hit, nor said anything that showed he was mad or disgruntled; and that Dr. Jamison did not testify nor is there any evidence, that petitioner during said examination manifested any displeasure, dissatisfaction or anger, and that there is no evidence that petitioner at any time or place or to any person ever made any reference to said examination or to anything that Dr. Jamison said or did at the time.

In view of the matters just stated, and since said testimony is the opinion or conclusion of the witness unsupported by the recital of any fact or facts upon which it is based and is in fact incompetent and entitled to no weight as evidence, and since said testimony is inherently weak and, even if conceded to be some evidence that petitioner was less friendly towards Dr. Jamison, there is nothing therein to show that petitioner was less friendly on account of anything that was said or done during said examination, it is submitted that said testimony does not constitute substantial evidence either that said assault was caused by, grew out of, or had any connection with, said examination, or that petitioner assaulted Dr. Jamison "knowingly", that is, with the deliberate purpose or specific

or actual intent to hinder or interfere with the administration of the Selective Training and Service Act or the rules or regulations thereunder.

2. The witness, Maudie Pitts, testified (R. 35) that, "one time" before the encounter between Dr. Jamison and petitioner, petitioner said to her, "I am going to get Dr. Jamison." Just when and where said statement was made, assuming it was made, does not appear except that it was made at some indefinite time prior to said encounter. The witness does not disclose what was being discussed, if anything, between her and petitioner at the time, nor in what connection said statement was made. There is nothing in the statement to show that it had any connection with Dr. Jamison's examination of petitioner back in December, 1940, or with anything that occurred during said examination. Since the statement could have been made almost two and one-half years after said examination and still have been made prior to said encounter, during which time Dr. Jamison as examining physician had no further connection whatsoever with petitioner, said statement, even if conceded to be evidence that petitioner was threatening or expressing animosity towards Dr. Jamison, could just as readily have referred, and more probably did refer, to something said or done by Dr. Jamison in his *private* or *unofficial* capacity, as to anything that was said or that occurred during said examination. Therefore, it is submitted that this statement attributed to petitioner is not substantial evidence either that said assault was caused by, grew out of or had any connection whatsoever with said examination, or that said assault was made knowingly", that is, with the deliberate purpose or specific or actual intent to hinder or interfere with said Act or the rules or regulations thereunder.

3. Dr. Rawlins testified (R. 38) that he heard petitioner say, during a discussion of various phases of the draft, that he was willing to go to the Army, did not feel he was any better than anybody else, and if they wanted him he would go, but that he did not feel that he should be "railroaded" into the Army as Dr. Jamison was "railroading him." Dr. Rawlins (R. 38) does not fix the time this statement was made, other than to say it might have been anywhere from three weeks to six months before the assault upon Dr. Jamison, but petitioner (R. 48) fixed the time as back in the winter of 1943, or approximately six months before said assault. The statement attributed to petitioner does not refer to Dr. Jamison's physical examination of him two years before, in December, 1940. The words "was railroading" indicate that the statement, if conceded to have been made, had reference to something Dr. Jamison was currently doing or saying or that petitioner thought he was currently saying or doing, to cause petitioner's induction into the armed services, and yet it is undisputed that the only official act or exercise of duty by Dr. Jamison as examining physician with reference to petitioner was his examination of him two years before. Said statement, therefore, in all probability and almost certainly referred to something subsequently said or done by Dr. Jamison in his *private* and *unofficial* capacity and not to said examination. Petitioner (R. 48) related the whole conversation with Dr. Rawlins on said occasion and, since Dr. Rawlins was not recalled and no effort was made to contradict his account of said conversation, it is to be presumed that, had Dr. Rawlins been recalled, he would not have contradicted petitioner, and therefore it is submitted that petitioner's reasonable and satisfactory explanation of said conversation must be considered in determining the probative value of the aforesaid statement attributed to him by Dr. Rawlins.

In view of these considerations, it is insisted that this statement attributed to petitioner is not substantial evidence to prove either that said assault was caused by, grew out of, or had any connection with said physical examination of petitioner by Dr. Jamison, or that said assault was committed "knowingly", that is, with the deliberate purpose or specific or actual intent to hinder or interfere with the administration of said Act or the rules or regulations thereunder.

4. Dr. Jamison testified (R. 25) that, in the drug store just before the difficulty, petitioner said to him, "I've got it in for you." There is nothing in this statement to connect it with said physical examination, made approximately two and one-half years before, nor was anything said at the time in connection with said statement to show that petitioner had it in for Dr. Jamison about anything that was said or that occurred during said examination or to indicate why petitioner was mad at Dr. Jamison, assuming that he was; and, considering the great lapse of time since said examination and the fact that it is undisputed that said examination was the only *official* act or exercise of duty by Dr. Jamison as examining physician ever performed by him in relation to petitioner, it is more reasonable and probable, especially since it affirmatively appears (R. 28) that he and Dr. Jamison met and passed numerous times in the interval between said examination and their encounter and petitioner had not previously manifested that he was mad at Dr. Jamison, that said statement attributed to petitioner had reference to something more recently said or done by Dr. Jamison, or that petitioner thought he had more recently said or done, in his *private* or *unofficial* capacity, rather than to said examination. It is, therefore, contended that said statement is not substantial evidence to show either that said assault was caused by, grew out of,

or had connection with said examination, or that said assault was made "knowingly", that is, with the intent to hinder or interfere with the administration of said Act or the rules or regulations thereunder.

5. The police officers, Claud Vance and F. C. Lamb, testified (R. 37, 53) to the effect that, shortly after the encounter or difficulty between petitioner and Dr. Jamison, in response to a remark by Claud Vance to the effect that he might have killed the man he assaulted, the petitioner in effect said that Dr. Jamison had been trying to put him in the Army "for the last two years" and also (R. 38, 53) that Dr. Jamison had been "meddling" in his business. The witness, W. E. Hopton, an agent of the Federal Bureau of Investigation, who talked to petitioner on the occasion he was arraigned before the United States Commissioner, in effect testified (R. 39) that, when he asked him why he had hit Dr. Jamison, petitioner told him that Dr. Jamison had been trying to put him into the Army; that, when he asked him if Dr. Jamison had ever said anything to him about putting him in the Army, petitioner said he had not, but that several people had told him Dr. Jamison "was trying" to get him in the Army; and that, when he asked him who had told him that, petitioner said that both Dr. Rawlins and Dr. Wiles had told him that.

It is to be noted that in these statements attributed to petitioner no reference is made to his examination by Dr. Jamison approximately two and one-half years previously nor to anything that Dr. Jamison told him on that occasion. The statement to the effect that Dr. Jamison had been trying to put him into the Army, attributed to petitioner by said police officers, was limited to the "last two years", and did not embrace but excluded by approximately six months the time of Dr. Jamison's examination of petitioner. The words "was trying" in the statement attributed to

petitioner by agent Hopton limited the efforts, if any, of Dr. Jamison to put petitioner in the Army to recent acts or statements of Dr. Jamison, and exclude the idea that petitioner by said statement was referring to said examination two and one-half years before. Further, when pressed by agent Hopton, petitioner did not refer to said examination or to anything said or done on that occasion but gave, as his reason for saying that Dr. Jamison was trying to put him in the Army, the fact that several people, including Dr. Rawlins and Dr. Wiles, had told him so. In view of these considerations, and the fact that it is undisputed that the only *official* act or exercise of duty by Dr. Jamison as examining physician was his aforesaid examination of petitioner, it is submitted that the conclusion is compelled that these statements attributed to petitioner referred to something said or done, or that, petitioner thought was being said or done, by Dr. Jamison in his *private* or *unofficial* capacity to get him in the Army and not to said examination, and that they are not substantial evidence to prove either that petitioner's assault upon Dr. Jamison was caused by, grew out of or had any connection with said examination, or that petitioner committed said assault "knowingly", that is, with the deliberate purpose or specific or actual intent to hinder or interfere with the aforesaid Act or the rules or regulations thereunder.

Even if the aforesaid statements attributed to petitioner by said police officers and Federal agent, made subsequent to his assault upon Dr. Jamison, be conceded for argument's sake to be some evidence that said assault was caused by, grew out of or had connection with Dr. Jamison's examination of petitioner, and that said assault was "knowingly" made, in the sense heretofore urged, it is submitted that there is no evidence, apart from and independent of said subsequent extrajudicial statements, proving or sub-

stantially tending to prove such essential elements or ingredients of the crime charged, or *corpus delicti.*

The *corpus delicti* cannot be established by such extrajudicial statements in the absence of such independent evidence. *Tingle* v. *United States* (C. C. A. 8), 38 F. (2d) 573; *Forte* v. *United States,* 68 App. D. C. 111, 94 F. (2d) 236, 127 A. L. R. 1120; *Gulotta* v. *United States* (C. C. A. 8), 113 F. (2d) 683; *Pines* v. *United States* (C. C. A. 8), 123 F. (2d) 825; *Warszower* v. *United States,* 312 U. S. 342, 61 S. Ct. 603, 85 L. ed. 876; *Wigmore, Evidence,* 3rd edition, Sections 2070-2071; 22 *C. J. S.,* pages 1471 *et seq.,* Section 839.

Thus, it appears and is again submitted, that there is no substantial evidence to prove two of the essential ingredients or elements of the offense charged, namely; that said assault by petitioner upon Dr. Jamison was caused by, grew out of, or was in any way connected with his examination of petitioner on December 23, 1940, and that said assault was committed "knowingly", that is, with the deliberate purpose or specific or actual intent to hinder or interfere with the administration of the Selective Training and Service Act or the rules or regulations thereunder.

With reference to the third essential element or ingredient of said offense, that said assault caused, as a matter of fact, an actual hindrance or interference with the administration of said Act or the rules or regulations thereunder, there is no evidence or proof whatsoever in the record of such actual hindrance or interference, as is demonstrated in the accompanying petition for writ of certiorari under the heading "SUMMARY STATEMENT OF THE MATTER INVOLVED", to which reference is here made in the interest of brevity.

If, as a matter of law, an assault upon a member of a Selective Service Board or one of its examining physicians,

growing out of his exercise of duty, is an interference with the administration of said Act or the rules and regulations thereunder, then no evidence of an actual hindrance or interference, as a matter of fact, is required to warrant or sustain a conviction of the offense defined or created in the clause, quoted *supra,* of Section 11 of said Act under which petitioner was indicted in this case.

If, on the other hand, an actual hindrance or interference, as a matter of fact, is a necessary or essential element or ingredient of said offense, as heretofore argued it is, then petitioner's conviction was unwarranted, cannot be sustained and must be reversed because there is no evidence of such hindrance or interference.

Wherefore, it is respectfully submitted that this case is one calling for the exercise of this Court of its supervisory powers, by granting a writ of certiorari as prayed for in the accompanying petition, and thereafter reviewing and finally reversing the judgment and decision in this case of the United States Circuit Court of Appeals for the Sixth Circuit.

R. W. Price,
C. L. Cummings,
Alfred B. Huddleston,
*Counsel for Petitioner.*

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612374—44

# In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 459

THOMAS CLYDE HELTON, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

### OPINION BELOW

The opinion of the circuit court of appeals (R. 70–74) has not yet been reported.

### JURISDICTION

The judgment of the circuit court of appeals was entered July 17, 1944 (R. 69), and a petition for rehearing (R. 74–80) was denied August 14, 1944 (R. 81). The petition for a writ of certiorari was filed September 12, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII

of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

## QUESTION PRESENTED

Whether there was sufficient evidence to warrant submission to the jury of the issue whether petitioner knowingly interfered by force and violence with the administration of the Selective Training and Service Act and the regulations issued thereunder, in violation of Section 11 of the Act.

## STATUTE INVOLVED

Section 11 of the Selective Training and Service Act of 1940, 54 Stat. 885 (50 U. S. C. App. 311), provides in part:

> * * * any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto * * * shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *.

## STATEMENT

On July 29, 1943, petitioner was indicted in the United States District Court for the Middle District of Tennessee for violation of Section 11 of the Selective Training and Service Act of 1940

(R. 2–3). The indictment, in one count, charged that on or about June 10, 1943, petitioner knowingly interfered by force and violence with the administration of the Selective Training and Service Act and the rules and regulations issued thereunder by wilfully and unlawfully assaulting and wounding Dr. Andrew J. Jamison, an examining physician for Selective Service Board No. 1, Murfreesboro, Tennessee (R. 2). After a jury trial, petitioner was convicted (R. 6) and was sentenced to imprisonment for four years (R. 57). On appeal to the Circuit Court of Appeals for the Sixth Circuit, the judgment was affirmed (R. 69–74).

The Government's case was predicated on the theory that petitioner forcibly interfered with the administration of the Act and regulations by assaulting an examining physician for his local board because in the performance of his official duties the physician had found petitioner physically fit for military service. The pertinent evidence in this respect may be summarized as follows:

Petitioner, who was thirty-five years old at the time of his trial (R. 41), registered with his local draft board in October 1940 and on December 5, 1940, he was classified I–A (available for military service) (R. 20). On December 23 he reported for a physical examination, as directed by his board, and, in the absence of Dr. Murfree, the board's chief examining physician, he was examined by

Dr. Jamison, who was a duly appointed examining physician for the board (R. 20–21). In describing the examination Dr. Jamison testified: "I examined him in the routine way. Clyde [petitioner] told me that he had had a heart attack, or at least a fainting spell, in a barber shop in Murfreesboro sometime before, possibly a year or two before, also that he had suffered a sunstroke several years previously, and also a nervous breakdown. I examined his heart, and found nothing wrong with his heart, and thereupon told him that I had found him physically fit for military service. He complained of being nervous, and appeared to be nervous and I told him that the Army would or might be good for him, or good for his nerves. He told me that he did not know what his trouble had been when Dr. Murfree had him under his care and suggested that I talk to Dr. Murfree about his past illnesses or disorders. Since Dr. Murfree was out of town, a report of my examination was not made at that time as I expected him to sign the report as was our custom." (R. 24.) Shortly thereafter petitioner went to Dr. Jamison's office and told him that "Dr. Murfree wanted to do the whole physical examination, if it was satisfactory with me [Dr. Jamison], and I told him it would be entirely satisfactory with me" (R. 27). Dr. Murfree, apparently after examining petitioner, referred him to a Dr. Walton, a member of the medical advisory board for the local board, who found that peti-

tioner was suffering from "psychoneurosis hysteria." On January 31, 1941, petitioner was classified IV–F (physically unfit for military service), but on June 12, 1942, after another physical examination by Dr. Murfree, he was classified I–A. Thereafter, at the direction of his local board, petitioner reported for induction, but at the induction center he was rejected as a psychoneurotic. On July 27 petitioner was again classified IV–F, which was his classification at the time of his trial. (R. 21.)

The evidence relating to the assaulting of Dr. Jamison by petitioner shows that in the evening of June 10, 1943, the doctor, who at the time of the trial was 63 years old, was present in a Murfreesboro drug store seated at one end of the soda fountain and that petitioner was seated at the other end (R. 25). Dr. Jamison testified: "When I went up to the counter I did not say anything to the defendant Thomas Clyde Helton. I heard him say to the girls behind the counter, 'Do you know this man' and I heard one of the girls say that she did not. The defendant then said: 'This is the Doc.' I did not say anything. I heard the defendant Thomas Clyde Helton say again: 'Why, that is the Doc.' I still made no reply, nor did I say anything. As I finished my Coca Cola and was about to leave, the defendant walked back towards me and to my rear and said to me, 'I've got it in for you.' I made no reply to this remark and as I started toward the door of

the store he said, 'Did you hear what I said?' I told him I did, but that I had just considered the source and had paid no attention to him, or words to that effect. I then walked out towards the front of the store, and out of the store, and got in the left door of and into my car parked at the curb. As I sat down in my car and started to close the left door of the car, I saw the defendant Thomas Clyde Helton coming towards me, and I said to him: 'Clyde, go on, I don't want to have any trouble with you. You think I have been trying to put you in the Army for two years.' The defendant replied, 'Come on out and fight, you damned old son of a bitch,' then grabbed me by my arm and around my neck or shoulder and pulled me out of the car. He hit me several times with his bare fists and knocked me down. My head struck the paved part of the street or public square, near the curb, and I sustained a cut on the back of my head. While I was down and he was still hitting me, some soldiers came up and took the defendant off me and I got up. The soldiers turned the defendant loose, he came back and grabbed me again and jerked me down on the street, bruising my legs. Somebody pulled us apart and took the defendant away." (R. 25–26.) As a result of the beating Dr. Jamison suffered bruises on the face, arm, and knee, and discoloration of both eyes, but he was able to return to his work after remaining home for one day (R. 26).

Dr. Jamison further testified that prior to his examination of petitioner he had been a life-long friend of petitioner's family and for several years had been his mother's doctor and had also attended his brothers and sisters "on occasions" (R. 27), and that after the examination petitioner became "cold or less friendly or cordial towards me" (R. 24).

Immediately after the altercation a local policeman remarked to petitioner that he might have killed Dr. Jamison, to which petitioner replied: "I hope I did kill the son of a bitch, he's been trying to get me in the Army for the last two years" (R. 37, 53). After petitioner had been arraigned before a commissioner on the present charge he was interviewed by an F. B. I. agent to whom he stated that he had assaulted Dr. Jamison because he "had been trying to put him into the Army" and that, naming two other doctors, "several people had told him Dr. Jamison was trying to get him into the Army" (R. 39). Both of these doctors, when interviewed by the agent, denied having made such statements to petitioner (R. 39).

Some time prior to the altercation, the exact time not having been fixed in the record, petitioner encountered Dr. Jamison in a Murfreesboro drug store, and after the doctor had left the store petitioner stated to a clerk that he was going to "get" Dr. Jamison (R. 35). On another occasion, some

six months, or less, prior to the assault petitioner stated in a conversation with a group of men at a social club that he was willing to go into the Army, "but that he did not feel that he should be 'railroaded' into the Army as Dr. Jamison was 'Railroading' him" (R. 38).

Petitioner's defense was bottomed on a denial that his difficulties with Dr. Jamison stemmed from selective service matters and he claimed that, instead, they resulted from Dr. Jamison's alleged unseemly attentiveness to petitioner's wife on earlier occasions. In this respect petitioner testified that on June 9, the day before the altercation, "my wife had told me about Dr. Jamison coming in McCord and Harris Drug Store the day before, and standing and staring at her the whole time she was in the store" (R. 45–46); and that the next day, when he saw Dr. Jamison in the drug store, "I decided I would talk to him about it and let him know that I did not like his staring at my wife. I did not have in my mind to have any fight or difficulty with him but simply intended to talk and let him know that I did not appreciate his conduct." Thereafter, petitioner testified, when Dr. Jamison went out to his car, he remonstrated with him about the staring incident and the doctor denied it "and he leaned over towards the right side * * * of his car. I thought he had a pistol or some other weapon in the car pocket and was trying to get it"; it was then that

he grabbed the doctor's arm and the fracas began (R. 46–47.)

Petitioner did not relate the alleged staring incident to the F. B. I. agent when explaining to him why he had assaulted Dr. Jamison (R. 54), and Dr. Jamison denied the incident or that he was in the drug store at all on June 9 (R. 53–54).

## ARGUMENT

Petitioner's sole contention (Pet. 4, 13–17, 18–21, 24–43) is that there was not sufficient evidence of petitioner's guilt to warrant submission of the question to the jury. Specifically, he asserts that the evidence was insufficient to permit a determination by the jury (1) that the assault grew out of Dr. Jamison's performance of his official duties; (2) that it caused an actual hindrance or interference with the administration of the Act; and (3) that petitioner knowingly hindered the administration of the Act.[1]

It is undisputed that petitioner unjustifiably administered a severe beating to Dr. Jamison. The crucial fact question is whether that beating was traceable to Dr. Jamison's official action as an

[1] Since the court's charge to the jury does not appear in the transcript of record, it must be assumed that the jury was correctly instructed as to the elements of the offense. *Moore* v. *United States*, 128 F. (2d) 887 (C. C. A. 5); *Keys* v. *United States*, 126 F. (2d) 181, 185 (C. C. A. 8), certiorari denied, 316 U. S. 694; *United States* v. *Gardzielewski*, 125 F. (2d) 138, 141 (C. C. A. 7), certiorari denied, 315 U. S. 823; *United States* v. *Waldon*, 114 F. (2d) 982, 984 (C. C. A. 7), certiorari denied, 312 U. S. 681.

examining physician for petitioner's local draft board. While the Government's evidence on this question may not have been so conclusive as to have compelled the conviction, we think that viewing it as a whole and in the light most favorable to the Government (*Glasser* v. *United States*, 315 U. S. 60, 80) it was sufficient to warrant submission of the question of petitioner's guilt to the jury.

The Government's evidence, summarized in the Statement, *supra*, pp. 3–8, shows that petitioner's ill feeling toward Dr. Jamison commenced after he had been examined by the doctor in the latter's capacity as an examining physician for the local board. Despite petitioner's claim that he had a heart condition and that he also had a nervous condition, Dr. Jamison found no heart ailment and, suggesting to petitioner that service in the Army might be good for his nerves, he found that petitioner was physically fit for military service. That petitioner was displeased by Dr. Jamison's findings is evident from the fact that without delay he arranged to have another complete examination by a different examining doctor for the board. It was likely that the conclusion of that doctor and another to whom petitioner was referred that he was not physically fit for military service confirmed in petitioner's mind his suspicion that Dr. Jamison unjustifiably sought to procure his induction into the Army. Recognizing these facts, petitioner argues, in substance, that

since the assault occurred more than two years after these events, the jury was not entitled to find that it was motivated by what occurred at that time. This argument, however, overlooks the fact that other evidence before the jury supports the inference that the animosity which developed in December 1940 manifested itself at the time of the assault because petitioner continued to believe that Dr. Jamison was using his official position as an examining physician for the local board to procure petitioner's induction into the Army.

The evidence in this respect shows that immediately after the altercation petitioner stated to two Murfreesboro policemen that he hoped he had killed Dr. Jamison because he "had been trying to get me in the Army for the last two years." Thereafter, after he had been arraigned before a commissioner on the present charge, petitioner explained to an F. B. I. agent that he had assaulted the doctor because "he had been trying to put him into the Army." Petitioner's conduct prior to the assault was consistent with these subsequent explanations. Not only did he become "less friendly" toward Dr. Jamison after the doctor had found him physically fit for military service, but thereafter on one occasion, after he had encountered the doctor in a Murfreesboro drug store, petitioner stated to a clerk of the store that he was going to "get" Dr. Jamison. On another occasion within six months prior to the altercation, petitioner stated publicly at a social club

that he believed Dr. Jamison was attempting to "railroad" him into the Army. In the absence of any credible explanation by petitioner, we think the jury was entitled to find that these statements both before and after the crime reflected petitioner's belief that during the entire period Dr. Jamison had used his official position as an examining physician for the local board to procure petitioner's induction into the armed forces, and that the assault was occasioned by petitioner's dissatisfaction with these supposed activities by the doctor.

Since, as the jury necessarily found, the assault on Dr. Jamison bore a direct relation to his status as examining physician for the local board, it follows under the decided cases that it was an interference by force and violence with the administration of the Act. *Burwell* v. *United States,* 137 F. (2d) 155 (C. C. A. 4); *Moore* v. *United States,* 128 F. (2d) 974 (C. C. A. 5); cf. *Bagley* v. *United States,* 136 F. (2d) 567 (C. C. A. 5). For while such an assault may have been motivated by past official action, its foreseeable effect extended to the future actions of the person assaulted as well as the persons working with him. Thus, in this case, despite the fact that petitioner was at that time classified IV–F, he was still within the jurisdiction of the local board and his classification was still a matter for re-examination by the board. (Selective Service Regulations 626.1, 626.2, 626.11X626.14.) There still remained the possibility that petitioner would be subjected to

further physical examinations to determine whether the earlier diagnosis was correct and whether his physical condition had improved since the earlier examination. Moreover, Dr. Jamison and other officials of the Selective Service System were concerned with classifying other registrants in petitioner's locality, and in administering the Selective Service process it was, of course, essential that these persons should be free to exercise their judgment unhampered by fear of violence at the hands of dissatisfied registrants. In short, an assault upon a selective service official because of dissatisfaction with his judgment in the performance of his official duties is inherently coercive and thereby impairs the successful functioning of the Selective Service System. While the Government offered no direct proof that such consequences actually followed from petitioner's misconduct, we submit that on the facts before it the jury was entitled to infer that such interference did result from the assault upon Dr. Jamison. Cf. *O'Hare* v. *United States,* 253 Fed. 538, 540 (C. C. A. 8), certiorari denied, 249 U. S. 598; *Doe* v. *United States,* 253 Fed. 903, 906 (C. C. A. 8).

Finally, it is plain that petitioner knew that Dr. Jamison was an official examining physician for the local board, that the doctor had examined him in the performance of his official duties, and that petitioner believed that the doctor was using his official status to procure his induction into the Army. Since the assault on the doctor was pur-

poseful and, as we have shown, since the jury was entitled to find that it stemmed from the doctor's official status, we think it follows that petitioner's interference with the Selective Service Administration was knowingly accomplished.[2]

## CONCLUSION

The decision below is correct and the case presents no conflict of decisions or question of general importance. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

CHARLES FAHY,
*Solicitor General.*

TOM C. CLARK,
*Assistant Attorney General.*

ROBERT S. ERDAHL,
*Special Assistant to the Attorney General.*

IRVING S. SHAPIRO,
*Attorney.*

OCTOBER 1944.

[2] Petitioner's reliance (Pet. 42–43) on the rule that a conviction may not be based solely upon a subsequent extra-judicial confession is misplaced. For here, in addition to the subsequent extra-judicial statement, the corpus delicti was established by direct testimony concerning the assault and by the defendant's statements prior to the offense. See *Warzower* v. *United States*, 312 U. S. 342.

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